IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2481 OF 2006

MOHIT GOVINDDAS MAHESHWARI ..PETITIONER

V/S

THE STATE OF MAHARASHTRA & ANR. ..RESPONDENTS

SHRI GANESH GOLE FOR THE PETITIONER.

SHRI Y.S. SHINDE - APP FOR STATE.

CORAM: V.M. KANADE, J.

DATE : 17TH AUGUST, 2007.

P.C.

1. Heard Shri Gole, learned counsel appearing on behalf of the Petitioner. The petitioner has challenged the order passed by the Metropolitan Magistrate, who has issued process against him on a complaint filed under section 138 of the Negotiable Instruments Act. This order was challenged by the petitioner before the Sessions Court in Revision. The Sessions Court dismissed the Revision Application. Being aggrieved by the said order the Petitioner has filed this Petition under Article 227 of the Constitution of India. Learned counsel appearing for the petitioner submitted that no averments have been made in the complaint that at the relevant time when the cheque was issued the petitioner

was in charge of the affairs of the business of the firm. It is submitted that the Petitioner has not signed the cheque and as such the complaint could not have been filed against him. He has relied upon the judgment of Apex Court in the case of S.M.S. Pharmaceuticals Ltd. v/s. Neeta Bhalla & Anr. reported in 2007 ALL MR (Cri) 870 (S.C.). It is not possible to accept the submissions made by the learned counsel for the petitioner. From perusal of the complaint it can be seen that specific averments have been made in the complaint by the complainant that accused No.1 and 2 were the partners of firm S.M. Exports. It is further stated that both the accused were looking after the said business and were incharge of and were responsible for the conduct of business of S.M. Exports. It is further stated that on account of supply of goods by the complainant a cheque towards the satisfaction of the dues was issued by the accused and both the accused had assured the complainant that the said cheque would be honoured. In my view there are sufficient averments in the complaint to the effect that at the time when the cheque was issued accused were in charge of day to day affairs of the business of S.M. Exports.

2. Learned counsel for the Petitioner has also relied

upon the judgment of the Apex Court in the case of

S.M.S. Pharmaceuticals Ltd. v/s Neeta Bhalla & Anr. reported in 2005(5) ALL MR (S.C.) 1118. In the said case the Apex Court has held that merely because the person is a director of the company that alone would not be sufficient for fastening the liability on him and that it is essential that averments must be made in the said complaint that the accused was responsible for the conduct of the business of the company. In my view the ratio of the said judgment will not apply to the present case. In the present case there are specific averments that the accused - petitioner was incharge of and was responsible for the conduct of the business of S.M. Exports. The learned counsel for the petitioner also relied upon another judgment of Supreme Court in the case of S.M.S. Pharmaceuticals Ltd. v/s. Neeta Bhalla reported in 2007 ALL MR (Cri) 870 (S.C.). The ratio of the said case will also not apply to the present case. Hence the petition is dismissed. The petitioner is at liberty to apply for expeditious trial of this case and if such application is made the same may be considered favourably by the Magistrate. The Trial Magistrate might not be influenced by the observations made by this court while dismissing this petition.

(V.M. KANADE, J)